IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.256 OF 2003

1. Arun Jagannath Bagade,
Age 58 years, Occ: Agri.

2. Vasudeo Jagannath Bagade,
Age 54 years, Occ: Agri.

3. Jayant Jagannath Bagade,
Age 50 years, Occ: Agri.

4. Avadhoot Jagannath Bagade,
Age 38 years, Occ: Agri.

All r/o Rahimatpur, Taluka
Koregaon, Dist: Satara. .... Petitioners

- Versus -

Appaso Rajaram Mane,
Age 38 years, r/o Rahimatpur,
Tal. Koregaon, Dist: Satara. .... Respondent

Shri Vishwanath Talkute for the Petitioners.

Shri Dilip Bodake for the Respondents.

**CORAM:** R.M.S. KHANDEPARKAR, J.

**DATED:** NOVEMBER 25, 2004

**ORAL JUDGMENT:**

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioners challenge the order dated 25-9-2002 passed by the trial Court rejecting the application filed under Section 9A of the Code of Civil Procedure.

By the said application, the petitioners had sought to raise preliminary objection regarding the jurisdiction of the Court to entertain the suit in view of the fact that the respondent has filed the suit for declaration of his tenancy rights in relation to the agricultural land and consequently the relief of injunction.

3. Bare reading of the plaint discloses that the respondent had approached the trial Court with the contention that he has been declared the tenant of the agricultural land and yet the petitioners/landlords are trying to interfere therein for demolition of the tin-shed of the respondent situated therein. The petitioners filed an application under Section 9A contending that in view of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the said Act", the suit for declaration of the tenancy rights is not maintainable and as the relief of injunction is a consequential relief based on such declaration, the entire suit itself is not maintainable in the civil Court. The said application has been rejected by the impugned order.

4. The petitioners have challenged the impugned order on two counts. Firstly, that on the face of the plaint which seeks the relief in the nature of declaration of the tenancy rights in relation to the agricultural land

and the relief of injunction having been prayed for consequently based on the relief of declaration of the tenancy rights, the plaint itself was required to be rejected as being not maintainable in the civil Court in view of the provisions of law comprised under Section 85(1) r/w Section 70(b) of the said Act. Secondly, the impugned order is challenged on the ground that to decide the issue of jurisdiction, the Court below ought to have framed a proper issue in that regard and only thereupon could have proceeded to adjudicate the said issue and the same could not have been decided merely while dealing with the application under Section 9A of the C.P.C. itself.

5. Plain reading of the plaint discloses that the respondent had approached the trial Court with the prayer to declare the respondent as being in possession and enjoyment of the suit land in the capacity as the tenant thereof and that therefore the petitioners be restrained from interfering therein. It is not in dispute that the suit property is an agricultural land to which the provisions of the said Act are applicable. Obviously therefore, the relief of injunction to declaration of the tenancy rights in whatever form it might have been asked for, cannot be decided by the civil Court and the jurisdiction in that regard is vested in the revenue Court, as specified under Section

85 of the said Act. Undoubtedly, the respondent has also prayed for the relief in the nature of permanent injunction, however, that is merely a consequential relief based upon the main relief of declaration. In such circumstances, the trial Court ought to have held that it has no jurisdiction to entertain the suit and therefore ought to have returned the plaint to the respondent to enable him to file it in the Court of competent jurisdiction.

6. In case the trial Court wanted to decide the issue regarding the jurisdiction to entertain the suit, certainly it ought to have framed the said issue and allowed the parties the lead evidence, if they so desire, and thereupon ought to have proceeded to decide the same in accordance with the procedure known to law and could not have decided the said issue merely while dealing with the application under Section 9A under which the petitioners had merely requested the trial Court to frame the issue regarding lack of jurisdiction and to decide the same.

7. By the impugned order, the trial Court has observed that the petitioners have raised the defence to the effect that the suit property is situated within the local limit of the municipal council and that the provisions of the said Act are not applicable to the

suit land. Bare reading of Section 43C of the said Act discloses that some of the provisions of the said Act are not attracted in the cases where the land is situated within the jurisdiction of the municipal council, but those provisions do not include Section 85 or Section 70 of the said Act. The trial Court failed in totally ignoring the said aspect of the matter while dealing with the application under Section 9A of the C.P.C.

8. It is true that the trial Court has held that though the civil Court has no jurisdiction to decide the issue pertaining to the claim of tenancy under the said Act, yet it could deal with the matter relating to injunction. In the facts and circumstances of the case, where the relief of injunction is entirely based on the declaration of the tenancy rights sought by the respondent, and since the relief of injunction in the circumstances cannot be separated from the relief of declaration, the question of entertaining such a suit by the civil Court cannot arise.

9. For the reasons stated above, therefore, the impugned order cannot be sustained and is liable to be set aside and the trial Court is to be directed to return the plaint in accordance with the provisions of Order 7, Rule 10 r/w Rule 10-A of the C.P.C. so as to

enable the respondent to prosecute the same in the Court of competent jurisdiction.

10. Hence the petition succeeds. The impugned order is hereby quashed and set aside. The trial Court is directed to return the plaint in terms of the provisions of Order 7, Rule 10 r/w Rule 10-A of the C.P.C. The rule is made absolute accordingly with no order as to costs.

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